No. 9166.

In the United States Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA, *ex rel.* FRANCIS E. EVANS, as British Consul for the Southern District of California and for Arizona,

Appellant,

vs.

ALEX GRAHAM, alias STRAKOSCH, who gives his true name as ALEXANDER STRAKOSCH,

Appellee.

APPELLANT'S REPLY BRIEF.

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APPELLANT'S REPLY BRIEF.

(Italics ours.)

It Is Not Necessary to Proceed on the Charges Set Forth in the Foreign Warrant of Arrest.

Appellee complains (Appellee's Br. p. 3) that the charges alleged in paragraph VIII-A of the Second Amended Complaint [Tr. pp. 74 to 86] are different to the charges set forth in the warrant issued in London for the arrest of himself and Spiro. [Tr. pp. 88 to 96.]

The requirements of the Treaty of 1931 (which are similar to those of the earlier treaties) are as set forth in appellant's opening brief (pp. 22-24).

There is not and there never has been in any of the Treaties of Extradition between the United States and Great Britain a requirement that a warrant of arrest or other equivalent document should have been issued by a foreign magistrate.

The present (1931) Extradition Treaty provides (Article 8), that the extradition shall take place in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed.

The law regulating extradition in force in the United States provides that the Commissioner may, *upon complaint under oath* charging any person found within the limits of his district of having committed, within the jurisdiction of the foreign government, any of the crimes provided for by the Treaty, issue his warrant for his apprehension, and if on hearing before him he deems the evidence sufficient to sustain the charge under the provisions of the Treaty, he shall so certify to the Secretary of State and issue his warrant of commitment. (U. S. C. 1934 Edition, p. 773, Sec. 651.)

Even Under a Treaty With a Foreign Power, Where a Warrant of Arrest Issued by the Foreign Magistrate Is Contemplated in the Treaty, Nevertheless It Is Within the Choice of the Demanding Government to Proceed Either Under the Treaty or Under the Provisions Enacted by Congress for the Extradition of Foreign Criminals.

In an early case (1883) in the case of a demand from Spain for extradition of a person alleged to have committed crimes in Spain, where a warrant of arrest by the Spanish magistrate was contemplated by the Treaty, the Court said as follows:

> "In effect, in our law, *two proceedings are available* to the demanding government; one, according to the provisions of the Treaty alone; *and the other under the revised statutes as well;* and so long as the provisions of neither are repugnant to the other, as in this case they are not, *it is at the option of the demanding government to pursue either.*"
>
> *Castro v. De Uriarte,* 16 Fed. Rep. 93, at p. 99.

Similarly, in the case of a demand from Russia, it was said as follows:

> "While the treaty contemplates the production of a copy of a warrant of arrest or other equivalent document, issued by a magistrate of the Russian Empire, *it is within the power of Congress to dispense with this requirement, and we think it has done so by Rev. Stat., sec. 5270, hereinbefore cited.* The treaty is undoubtedly obligatory upon both powers and, if Congress should prescribe additional formalities than

those required by the treaty, it might become the subject of complaint by the Russian government and of further negotiations. *But notwithstanding such treaty, Congress has a perfect right to provide for the extradition of criminals in its own way, with or without a treaty to that effect,* and to declare that foreign criminals shall be surrendered upon such proofs of criminality as it may judge sufficient. *Castro v. De Uriarte,* 16 Fed. Rep. 93. This appears to have been the object of sec. 5270, which is applicable to all foreign governments with which we have treaties of extradition. The requirements of that section, as already observed, *are simply a complaint under oath,* a warrant of arrest, evidence of criminality sufficient to sustain the charge under the provisions of the proper treaty or convention, a certificate by the magistrate of such evidence and his conclusions thereon, to the Secretary of State. *As no mention is here made of a warrant of arrest, or other equivalent document, issued by a foreign magistrate, we do not see the necessity of its production. This is one of the requirements of the treaty which Congress has intentionally waived.* Moore on Extradition, sec. 70. (*Grin v. Shine,* 187 U. S. Rep. (1902) at p. 191.) *'It is not a necessary preliminary step that a warrant be issued abroad against the offender and therefore the complaint need not state that fact.'*"

Re Farez, 7 Blatchford 345 (this case was cited with approval in *Oteiza v. Jacobus,* 136 U. S. at p. 338).

Inclusion of the Foreign Warrant as an Exhibit in the Second Amended Complaint Is Mere Surplusage.

It is true that in the instant case the second amended complaint includes the foreign warrant as an exhibit by way of narrative [Tr. pp. 88-96]; but this is mere surplusage.

The charges on which the hearing before the Commissioner was held are embodied in paragraph VIII A of the second amended complaint. [Tr. pp. 74-86.]

On November 30, 1937, at the commencement of the hearing, counsel for appellant asked and received permission to amend the complaint by reframing the charges which were proved by the depositions and handed in the amendments which he proposed to make.

Counsel for appellee *conceded that the Commissioner had discretion to allow the amendment and no objection was taken* [Tr. p. 296], but asked that the amendments be embodied in a complete document as a second amended complaint, which was subsequently done and the hearing was adjourned for a week to enable counsel for appellee to study the second amended complaint with the amendments (Para. VIII A) embodied therein. His Honor, Judge Hollzer in his findings concludes:

> "that in granting leave to file the second amended complaint the Commissioner did not commit any abuse of discretion, and further that petitioner is estopped to attack such ruling." (App. Appellee's Br. p. 31.)

The Charges in the Complaint May Be Different to Those Contained in the Foreign Warrant.

In an early case (1883) in which Switzerland was demanding extradition of the United States, proceedings had been started in Switzerland and *a complaint was filed in the United States charging different offenses to those which were charged in the criminal proceedings in Switzerland.* In the habeas corpus proceedings the Court in giving judgment said as follows:

> "Moreover, it is immaterial what the particular charge made in Switzerland is, inasmuch as it is not essential to extradition that there should have been any previous criminal proceedings instituted there as a prerequisite to the institution of extradition proceedings here. The same objection seems to have been raised and overruled in the case of *Farez,* 7 Batchf. 346, and in the case of Herman Thomas, 12 Batchf. 370-380. Even if proceedings upon a lower grade of offense had been instituted in Berne, *I do not see how that would prevent a subsequent complaint and requisition here for the extradition of the accused upon a higher offense within the treaty, if such an offense were proved,* as has been proved in this case. All that the treaty requires is that a requisition be made 'in the name of the respective governments through the medium of their respective diplomatic or consular agents'; and if the commission of the crime be properly established, as has been done in this case, the treaty declares that the accused 'shall be delivered up to justice.' *There is no condi-*

tion in the treaty requiring any previous criminal charge in Switzerland; nor can the fact—if it be a fact—that a less offense, not covered by the treaty, has been previously charged there, annul the treaty obligations or justify a refusal to surrender the accused, if a treaty offense is charged and proved upon a subsequent requisition here. *In such a case it is to be presumed that new proceedings are designed to be instituted there for the higher offense which is here charged, and for which the accused is claimed.*

In the complaint presented to the Commissioner in this case the complainant makes oath that he is the consul of the Swiss confederation at this port, duly recognized as such by the president of the United States; and, in conclusion, the complainant, as such consular agent, and 'in the name of the Swiss confederation, requests a warrant, etc., for the delivery of said Roth to the authorities of the Swiss confederation, in accordance with the terms of said treaty.'

All the conditions of the stipulations of the treaty have, in my opinion, been fully met; and the writ, therefore, should be dismissed, and the prisoner remanded." (*In re Roth,* 15 Fed. Rep. 506, at p. 508.)

The above mentioned cases *In re Farez* and *In re Roth* were cited with approval in the case of *Yordi v. Nolte* (1902), 215 U. S. Rep. 227, at p. 230, wherein the Court, giving judgment, said as follows:

"The general doctrine in respect of extradition complaints is well stated by Judge Coxe in Ex parte Sternaman, 77 Fed. Rep. 595, 597, as follows:

'The complaint should set forth clearly and briefly the offense charged. *It need not be drawn with the*

formal precision of an indictment. If it be sufficiently explicit to inform the accused person of the precise nature of the charge against him it is sufficient. The extreme technicality with which these proceedings were formally conducted has given place to a *more liberal practice,* the object being to reach a correct decision upon the main question—*is there any reasonable cause to believe that a crime has been committed?* The complaint may, in some instances, be upon information and belief. The exigencies may be such that a criminal may escape punishment unless he is promptly apprehended by the representatives of the country whose law he has violated. From the very nature of the case it may often happen that such representative can have no personal knowledge of the crime. If the offense be one of the treaty crimes, and if it be stated clearly and explicitly *so that the accused knows exactly what the charge is, the complaint is sufficient* to authorize the commissioner to act. The foregoing propositions are, it is thought, sustained by the following authorities: In re Farez, 7 Blatchf. 345, Fed Cas. No. 4, 645; In re Roth, 15 Fed. Rep. 506, *et al.*"

In the case of *Yordi v. Nolte, supra,* there were *three different complaints filed against the accused,* see p. 228. In the case of *Rice v. Ames,* 180 U. S. Rep. 371, at p. 372, there were *three complaints issued by three different people* and there was no suggestion of any irregularity therein.

Doubts Expressed by the Commissioner During the Hearing.

Twenty-five (25) pages of appellee's brief (pp. 6 to 30, both inclusive) are taken up with a recital of the doubts originally expressed by the Commissioner during the course of the hearing.

These doubts were eventually cleared up and the reasons given by the Commissioner for his decision are set forth in appellant's opening brief at pp. 18 to 21, both inclusive, and, therefore, will not here be repeated.

Alleged Bias of the Commissioner.

On page 33 of his brief, appellee charges the Commissioner with bias in that he stated that he thought that any doubt should be resolved in favor of the State. A reference to this passage in the hearing before the Commissioner [Tr. pp. 364, 365] would seem to show that any leaning in the mind of the Commissioner was in favor of the appellee, as witness the following:

> "Mr. Henry Dockweiler: In other words, you have to present a case which is considered by the committing magistrate to involve probability that the man, if tried, would be convicted. A mere suspicion is not sufficient. Anybody who is linked with someone convicted or accused * * *
>
> The Commissioner: Probable cause evidently falls between suspicion * * *
>
> Mr. Henry Dockweiler: (Interrupting) And beyond a reasonable doubt.
>
> The Commissioner: I say, it falls between there." [Tr. p. 365.]

Whereas, *according to the decision of this very Court* "a strong suspicion" reasonably entertained is sufficient "reasonable and probable cause" to commit an accused person for trial. (Appellant's Op. Br. pp. 25, 26.)

The Conclusions of Judge Hollzer.

The main question before the Commissioner as stated by appellee's counsel was whether appellee was one of the "group of malefactors" who perpetrated these frauds. [Tr. pp. 352, 353; Appellant's Op. Br. pp. 16 and 17.]

The conclusions of Judge Hollzer that appellee did not represent either of the firms of Maclean & Henderson or S. R. Bunt & Co. in any of the transactions relating to the deposit of any of the securities or funds by any of the persons mentioned in the second amended complaint; that he did not receive any of the securities or any of the checks or funds deposited with either of the said firms and also did not represent either of said firms in any of the transactions upon which any of the offenses described in the second amended complaint are based (Appellee's Br. pp. 36, 37) are directly contrary to the evidence of Jones, Kerman and Williams. (Appellant's Op. Br. pp. 68 to 73, both inclusive.)

Mr. Jones stated Spiro brought *appellee* into his office and introduced him as his assistant and said that he (Spiro) was going abroad and asked that if *appellee* wanted any money Mr. Jones should let him have it and he (Spiro) would be responsible for it. Mr. Jones also states that *appellee* deposited Maclean & Henderson checks as collateral security and that the actual checks paid to Spiro, *appellee,* and Taylor in connection with the loans were produced at the trial of Taylor, Elphinstone, and

Underhill. (Appellant's Op. Br. pp. 68, 69.) Mr. Kerman stated Spiro introduced *appellee* and Taylor to him and told him they were his assistants in charge of his office while he was abroad and one or two transactions were carried out with *appellee* and Taylor; and the actual checks paid to Spiro, *appellee,* and Taylor in connection with the loans to Maclean & Henderson were produced at the trial of Taylor, Elphinstone, and Underhill. (Appellant's Op. Br. p. 69.) Mr. Williams stated that in the transaction with Mills Conduit Investments Ltd. Spiro, *appellee,* and Taylor received a large number of checks by way of advances between August, 1934 and September, 1936; the total number of the checks being £189,585-10-6 (or $947,925), a number of which were converted into cash and in the series of similar transactions with Dunn Trust Ltd. between January, 1935 and February, 1937, Spiro, *appellee,* and Taylor received checks to the amount of £95,848-13-8 (or $479,240) and that certain of these checks representing a total value of £64,000 (or $320,000) were converted into cash. (Appellant's Op. Br. p. 73.) There is also the fact of the ownership by *appellee* of a large number of the shares of the bogus companies and the transfer by him of the shares to the defrauded customers. (Appellant's Op. Br. pp. 79 to 81.)

These facts, together with all the other facts implicating appellee as one of the "group of malefactors" who perpetrated the frauds set out on pages 76 to 83 of the appellant's opening brief are entirely ignored by Judge Hollzer in his conclusions. In other words, Judge Hollzer's conclusions amount to this: You cannot show me that appellee was the actual person who went into the house and committed the burglary. I will therefore ignore the fact that he was in close association with the burglar,

arranged for the burglary and watched to see that the burglar was not caught while the crime was being perpetrated.

As Judge Hollzer's conclusions are directly at variance with the evidence in the depositions, he must have *weighed the evidence,* which he had no right to do on habeas corpus (cases cited, Appellant's Op. Br. p. 29).

Appellee's Comments on the Evidence Submitted by Appellant.

Appellee, in commenting (Appellee's Br. p. 41) upon the evidence of appellant, insists that of the thirty (30) depositions only eighteen (18) should be considered as establishing evidence connecting Strakosch with the frauds, for the reason that the eighteen depositions are the only ones which mention *appellee* and therefore are the only ones which should be considered.

Appellant's position is as stated in appellant's opening brief, page 30: "where several persons are acting together and with a common intent and design to commit a crime and they co-operate to a common end, one doing one thing and another doing another thing, they are all guilty as principals to the same extent as if each one were the sole offender and this community of unlawful purpose may be shown by circumstances as well as by direct evidence." Therefore, the showing of association by *appellee* with others of this group of malefactors makes *appellee* responsible for all acts of all malefactors if the association is sufficiently shown. In considering the comments of *appellee* upon the depositions, appellant's contention is that all depositions must be given consideration and not only those in which *appellee* is specifically

mentioned. For clarity's sake, the depositions will be considered in the order of time and comment on the depositions selected by *appellee* will follow thereafter.

The deposition of Peter McIntyre Hunter [Tr. p. 182] states:

> "Shortly before September, 1934, being anxious to dispose of the business (Maclean & Henderson) I answered an advertisement in the 'Financial Times' and ultimately received a call from two persons giving the name of Elphinstone and Stanley * * * the person who gave the name of Stanley I now know to be Stanley Grove Spiro * * * the business was bought in the name of Elphinstone * * *"

The deposition of Luis Sancha [Tr. p. 183] states:

> "in December, 1934, we let three rooms to Maclean & Henderson at 36 New Broad Street. The first person I saw was a *Mr. Graham.* He came with a man named Stanley * * * Maclean & Henderson became tenants on the 24th of December, 1934."

Comment: The first showing of association between *Graham, alias Strakosch* and Spiro, alias Stanley, the righleader of the group of malefactors.

Deposition of Elizabeth Payn [Tr. p. 184] states:

> "the file of the firm of Maclean & Henderson shows it was registered on 21st of August, 1935 (but this is obviously an error as the same file shows that the business commenced in October, 1934) by Elphinstone. That business commenced in October, 1934, and that the place of business was 36 New Broad Street * * * The firm of S. R. Bunt & Co. was first registered * * * on the 20th March, 1917

> * * * a certificate was issued on the 7th of March, 1936, to Samuel Taylor * * * the address of the business was given on such certificate as 1 Royal Exchange Avenue * * *."

Comment: Samuel Taylor has now joined *Graham,* Stanley and Elphinstone as one of the group of malefactors. The associates now commence organization of the bogus companies.

Deposition of Leonard Peter Darsley [Tr. p. 186] states:

> "the file of the Anglo African Corporation shows * * * notice of change of directors dated 3rd May, 1934 shows the addition of Samuel Taylor as director * * * The file of the Scottish Gas Utilities Corporation shows * * * The first allotment shows those 70,000 (shares) allotted to various names including Anglo-African Corporation 4,500 * * * L. Grove Spiro, 6,500, Roy Spiro, 6,500 and *Alex Strakosch,* 7,000. The return of Directors dated 3rd May, 1934 shows the Directors to be * * * Samuel Taylor * * * and in the next return of shares, Taylor holds 22,000 of the shares transferred to him. Samuel Taylor is shown as a Director right up to the end * * * The file of Gold Reefs of West Africa, Ltd. shows that it was incorporated on 1st November, 1934 * * * The file of the West African Mining Corporation shows that it was incorporated on 2nd November, 1936. The return of allotments filed 11th January, 1937 shows ordinary shares payable in cash, 471 and for consideration other than cash 170,000. That the 170,000 are shown as allotted to Robert Isidore Hickman and the return is signed C. W. Engel * * *."

Comment: The bogus companies are now shown by these depositions to be ready for the perpetration of the frauds; the associates are now in control of the bogus companies and ready to sell the shares.

Deposition of Charles Walter Engel [Tr. p. 218] states:

> "I called at 29 King William Street, E. C. on several occasions to see the secretary of the West African Mining Corporation, Ltd. I subsequently acted as secretary of that company and I still am the secretary * * * I allotted the shares to Hickman * * * I remember meeting a man named *Alex Graham* * * * Hickman and *Graham* met in my presence; Hickman who was virtually the owner of the company at that time told me he was disposing of his block of shares to *Mr. Alex Graham* and the agreement was signed by Hickman * * * *Graham* gave me instructions to get new offices and I found some which were not suitable. *Graham* said he had found some and we moved into 7 Gresham Street, E. C. * * * Mr. Scully and Mr. King resigned as Directors on 21st January when *Graham* took over. * * * I certified the 170,000 shares out of *Graham's* name."

Comment: In pursuance of the pre-arranged plan, *Graham* has acquired one of the bogus companies with which to bilk the public. We now find the associates located as follows: Mr. Elphinstone owning Maclean & Henderson's distributing agency; Mr. Taylor, Bunt & Co., another distributing agency; Samuel Taylor owing the Anglo-African Corporation, Ltd., a bogus company; Mr. Spiro and *Mr. Graham* owning Scottish Gas Utilities, a bogus company; *Mr. Graham* (*alias Strakosch*) owning West African Mining Company, another bogus company.

Activities of the Group in Connection With Carrying Out the Fraudulent Scheme.

Deposition of Francis Joseph Mildner [Tr. p. 191] states:

> "In 1934 I was introduced * * * to a man named *Graham*. As a result I called upon *Mr. Graham* at the office of Maclean & Henderson * * * He gave me an order for printing on behalf of the firm of Maclean & Henderson * * * I did a considerable amount of printing for Maclean & Henderson, including the publication called the 'Weekly Financial Review' * * * as a rule *Graham* paid me in notes. I know Samuel Taylor; he gave me orders for the Scottish Gas Utilities Corporation, Ltd. That work was paid for in cash by Samuel Taylor or by one of the clerks in the office at 5 Suffolk Street. I saw Samuel Taylor there; he asked me to print some letter paper in small jobs for the firm of S. R. Bunt & Co. He had his name down as proprietor for S. R. Bunt & Co I did printing for S. R. Bunt & Co., including the printing of a publication by Bunt & Co. called 'The Stock Market News.' * * * I have seen Stanley Grove Spiro fairly frequently at 5 Suffolk Street * * *."

Comment: The malefactors are now ready to commence bilking the old customers of Maclean & Henderson and S. R. Bunt & Co. However, before taking up the individual transactions, further evidence of the activities of the group should be considered.

Deposition of May Lillian Phillips [Tr. p. 222] states:

> "I was employed as a shorthand typist by Maclean & Henderson starting in January, 1935. *Mr Graham* gave me the instructions * * * William Under-

hill dealt with the post unless *Alex Graham* was there before him, then he dealt with it. *Alex Graham* used to come to the office at New Broad Street almost every day. *Graham* dictated all letters as to change of address * * * *Alex Graham* used to ask for a line and get his own numbers * * * In April, 1936 I was taken by *Alex Graham* to S. R. Bunt & Co. * * * *Alex Graham* called William Underhill and me into the inner office and *Alex Graham* told William Underhill that I was going to work in S. R. Bunt & Co. and off we went. * * * *Alex Graham* gave me orders at S. R. Bunt & Co. *Alex Graham* opened the letters and gave me some. I did not have all. Others he took away. * * * *Alex Graham* told me to go to an office in King William Street * * *."

Deposition of Ruby Isabel Croucher [Tr. p. 225] states:

"I entered the employment of Stanley Grove Spiro in January, 1936. I was engaged as a typist to work at 5 Suffolk Street. The staff when I began to work there consisted of * * * Mr. Taylor and *Mr. Graham* (I have heard *Graham called Strakosch*) * * * *Graham* (*otherwise Strakosch*) gave me instructions with reference to the firm of Maclean & Henderson * * * I mentioned to *Graham* when Maclean & Henderson's paper was running short and I got more * * * Stanley Grove Spiro sometimes dictated letters with reference to this concern, and also *Graham* (*otherwise Strakosch*) * * *."

Deposition of Rose Kathleen Watson [Tr. p. 227] states:

"I was employed as a shorthand typist by Stanley Grove Spiro in May, 1936 * * * Miss Brabyn took me to 16 Conduit Street (another bogus ad-

dress) *Alex Graham* paid me my wages. He had been there at Conduit Street before he paid me * * * I was sent at the end of the week to Bilbao House, 36 New Broad Street, E. C. * * * *Alex Graham* took me there. *Alex Graham* came to the office quite frequently * * *."

Comment: The appellee is now shown to be the sole owner of one of the bogus companies, to be in close association in giving orders in connection with all the business carried on by this group of malefactors; he is shown to be in all five offices; to be issuing instructions for the carrying on of the business. *The evidence now will show that appellee not only was closely associated and in fact a member of this group of malefactors, but also shared in the spoils of the frauds.*

Deposition of Alexander Michael Jones [Tr. p. 231] states:

"I am Managing Director of Mills Conduit Investments, Ltd. * * * Stanley Grove Spiro had business dealings with us prior to the letting of these premises * * * Stanley Grove Spiro from time to time borrowed money on short dated loans from us * * * Sometime in the early part of 1936 Stanley Grove Spiro came and told me that he was going abroad. *He brought Alex Graham and introduced him as his assistant and asked should Alex Graham be wanting any money I was to let him have it and he would be responsible for it. He introduced Samuel Taylor to me in the same way. In Alex Graham's case he deposited as collateral security Maclean & Henderson checks (for funds withdrawn by Graham).* The actual checks paid to Stanley

Grove Spiro, *Alex Graham* and Samuel Taylor in connection with the loans referred to above I produced at the trial of Samuel Taylor, John Wm. Robert Elphinstone and Wm. Underhill * * *."

Deposition of David Kerman [Tr. p. 233] states:

"I am the Managing Director of Dunn Trust Ltd. From the beginning of January, 1935 we advanced money to Stanley Grove Spiro in large sums for short dates * * * I knew of the firm of Maclean & Henderson; it was on behalf of that firm that Stanley Grove Spiro was acting. Some of the securities (deposited) were of the clients of Maclean & Henderson * * *; in the early summer of 1936 Stanley Grove Spiro introduced both *Alex Graham* and Samuel Taylor to me. *He told me they were his assistants and in charge of his office while he was abroad; one or two transactions were carried out with Alex Graham and Samuel Taylor* * * * The actual checks paid to Stanley Grove Spiro, *Alex Graham* and Samuel Taylor in connection with the loans referred to above I produced at the trial of Samuel Taylor, John Wm. Robert Elphinstone and Wm. Underhill * * *."

Comment: *We now find Alex Graham and Samuel Taylor as managers of Maclean & Henderson.* We find they have managed the business, pledged securities and received the spoils of the frauds which are hereinafter dealt with. The *appellee* is now shown to be the sole owner of one of the bogus companies; the co-manager of the bucketshop and he is shown to have received fruits of the frauds perpetrated by the group.

Comment Upon the Eighteen Depositions Which Appellee Insists Do Not Show Either Singly or as a Whole That There Is Sufficient Cause to Believe Him Guilty of the Charges.

The burden of *appellee's* argument (Appellee's Br. pp. 41 to 67) is that he is not subject to extradition herein because in none of the thirty affidavits or depositions does it appear (so *appellee* argues) that he *personally* made false representations directly to any of the victims of the group of admitted malefactors. If appellant's theory of the case as set forth (Op. Br. pp. 30 to 34) be correct (and no authorities to the contrary have been presented by *appellee*), *appellee's* contention is utterly immaterial, because, by reason of his proven association with the admitted malefactors in the frauds charged, *appellee* is now chargeable as a principal.

Cases Cited by Appellee.

Of the six cases cited by the *appellee* on p. 70 of his brief, four of them have already been dealt with in appellant's opening brief and are authority for the contrary of the proposition that *appellee* puts forward.

Oteiza y Cortes v. Jacobus (C. C. A. N. Y. 1890), 136 U. S. 330 (Appellant's Op. Br. p. 27);

Ornelas v. Ruiz, 161 U. S. 502 (Appellant's Op. Br. p. 28);

McNamara v. Henkel, 226 U. S. 520 (1913) (Appellant's Op. Br. p. 29);

Fernandez v. Phillips, 268 U. S. 311 (Appellant's Op. Br. p. 29).

Of the other two cases mentioned by *appellee* in his brief, *Pierce v. Creecy,* 210 U. S. 387 does not support *appellee's* position. In the case of *Hatfield v. Guay,* 87 Fed.

(2d Ser.) p. 358 there were two counts against the accused; in one count the Court held that the evidence presented before the commissioner conclusively proved that the accused was innocent of the charge on that count (p. 364); on the other count the Court held that there was "evidence upon which the Commissioner Barnard could have found reasonable grounds to believe" the accused guilty (p. 368).

In the case at bar it has already been demonstrated there was evidence upon which Commissioner Head could find reasonable grounds to believe *appellee* guilty of participation in the crimes set forth in the Second Amended Complaint.

Trial by the Court of the Requesting Jurisdiction.

On p. 72 of his brief *appellee* comments on the fact that if Commissioner Head's decision is sustained, *appellee* can be tried on each of the nineteen counts and states that "an examination of the evidence discloses the absurdity of such a development." As already pointed out in the previous portion of this brief, appellee's counsel admitted (Appellant's Op. Br. pp. 16 and 17) that the crimes charged had been committed, and that it was only a question whether *appellee* was one of the group of malefactors, and Judge Hollzer found that the crimes charged had been committed by Stanley Grove Spiro, alias Stanley, alias Royston, and also by various other persons. If appellee was a member of the group of malefactors he is just as guilty in law of the crimes as the actual perpetrators thereof, the law being that "where several persons are acting together and with a common intent and design to commit a crime and they co-operate to a common end, one doing one thing and another doing another thing, they are

all guilty as principles to the same extent as if each one were the sole offender, and this community of unlawful purpose may be shown by circumstances as well as by direct evidence". (Appellant's Op. Br. p. 30.)

The Hay-Pauncefote Treaty Which Has Substantially the Same Provision as the Dawes-Simon Treaty as to Obtaining Valuable Securities by False Pretenses Remained in Force Until the Dawes-Simon Treaty Came Into Force.

Appellee states on p. 73 of his brief that according to the decision in *Hatfield v. Guay,* 87 Fed. (2d Ser.) at p. 358 the Dawes-Simon Treaty of 1931 did not come into force until 24th of June, 1935. Even if this be correct, it can make no difference in the liability of *appellee* to prosecution under the first and second charges (a) and (b) in the Second Amended Complaint relating to Turner and East which were both charges of obtaining valuable securities by false pretenses.

The Supplementary Convention of 13th December, 1900 (commonly known as the Hay-Pauncefote Treaty) adds to the list of offenses made extraditable under the 10th Article of the Webster-Ashburton Treaty of 1842 the crime of "obtaining money, valuable securities and other property by false pretenses" (Malloy's Treaties, Vol. 1, at p. 782).

The 18th Article of the Dawes-Simon Treaty of 1931 provides (in part) as follows:

> "*On the coming into force* of the present treaty the provisions of Article 10 of the treaty of the 9th August, 1842, of the Convention of the 12th July, 1889, of the *supplementary Convention of the 13th December, 1900,* and of the supplementary Conven-

tion of the 12th April, 1905, relative to extradition, shall cease to have effect." U. S. Stat. at large, Vol. 47, part 2, p. 2122; Treaty Series No. 849.

So that if the Dawes-Simon Treaty was not in force on February 8th, 1935 and June 17th, 1935 the Hay-Pauncefote Treaty of 1900 was in force which has the same provision relating to "obtaining valuable securities by false pretenses" as the later Dawes-Simon Treaty of 1931 and it is trite law that all Courts in the United States take judicial notice of Treaties between the United States and foreign governments (23 Corp. Juris, p. 92, Sec. 1883 and innumerable cases there cited).

Conclusion.

It is respectfully submitted:

That, in conformity to the decisions cited pp. 25, 26 appellant's opening brief (including *Curreri v. Vice* decided by this very Court), the record herein clearly establishes uncontradicted facts which, at very least, would lead a man of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that *appellee* is guilty of participation in the crimes charged herein, and that there was competent evidence presented to support Commissioner Head's finding herein that *appellee* be held for extradition.

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